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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8449 OF 2017

Shaikh Firoz Shaikh Ismail

PETITIONER

VERSUS

Jyoti Tanhaji Shinde and Others

RESPONDENTS

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Mr. Vikrant S. Palshikar, Advocate for the petitioner

Mr. Ramesh C. Kulkarni, Advocate for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 6th JULY, 2017

ORDER :

1. Heard learned advocates for the appearing parties.
2. The petitioner, is defendant No. 3 in Rent Suit bearing No. 2 of 2015, which is partly decreed by Civil Judge, Junior Division, Aurangabad.
3. Learned advocate for the petitioner submits that while the rent suit went *ex parte* against defendant No. 3 - present petitioner due to demise of his advocate had not been knowing developments in the matter and decree came to be passed on 7th

July, 2016. He came to know about the same only after notice of execution proceedings had been received at his end.

4. Proceedings under Order IX, Rule 13 of the Civil Procedure Code for setting aside *ex parte* decree have been preferred along with an application for condonation of delay along with yet another application seeking stay to the execution of decree during pendency of proceedings.

5. Notices have been issued on delay condonation and stay applications and process is going on. Even an application for service by paper publication has been filed.

6. In the meanwhile, since the decree had not been stayed, while execution was sought, an application came to be moved before executing court, which has been termed as obstruction petition. The same has been rejected by the court. Learned advocate, therefore, urges to grant interim relief, whereunder his possession can be protected and proper recourse can be resorted to.

7. On the other hand, learned advocate Mr. Kulkarni appearing for respondent No. 1 – original plaintiff contends that defendant No. 3 has absolutely no right to the property and he is

unnecessarily meddling with in the matter to prolong and procrastinate execution of decree on one or the other pretext. There is absolutely no substance in the writ petition. He further purports to advert to the prayers in the writ petition which is an indication of that as a matter of fact *ex parte* decree is under challenge. He submits that the writ petition, as such, is misconceived and untenable.

8. Overall it emerges that defendant No. 3 claims to be in possession of the property. His application pursuant to Order IX, Rule 13 of the Civil Procedure Code is pending along with couple of other applications for delay condonation and stay to execution of decree. It appears that some other application had been moved, which has been rejected and thus the petitioner is before this court.

9. Looking at aforesaid and particularly that application for interim relief is pending, it appears to be expedient if court proceeds with further expeditiously with the applications filed by the petitioner for stay and condonation of delay and pass orders thereon. As such, the court should proceed with applications filed by the petitioner expeditiously and pass orders interim or otherwise on the same. Lest, the proceedings by petitioner

would be preempted if the execution is allowed to go on.

10. Writ petition could not be entertained for reliefs sought. So far as the order passed on application Exhibit – 17 in Regular Darkhast No. 121 of 2016 which appears to have prompted filing present writ petition is concerned, petitioner may take recourse to the remedy as may be advised.

11. With aforesaid, writ petition stands disposed of.

[SUNIL P. DESHMUKH, J.]

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